

The Honorable Karen A. Overstreet  
Chapter 11  
Location: Seattle, 7206  
Hearing Date: To be set  
Hearing Time: To be set  
Response Date: At Time of Hearing

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In re

PRECISION AIRMOTIVE, LLC,  
  
Debtor.

Case No. 12-22154

**MOTION FOR ORDER AUTHORIZING  
DEBTOR TO PAY PREPETITION  
WAGES, SALARIES, COMMISSIONS  
AND EMPLOYEE EXPENSES, TO PAY  
ACCRUED EMPLOYEE BENEFITS  
AND TAXES, AND DIRECTING BANKS  
TO HONOR PAYROLL AND EXPENSE  
CHECKS**

Precision Airmotive, LLC (“Precision” or the “Debtor”), as debtor and debtor-in-possession, files this Motion (the “Payroll Motion”) and respectfully represents as follows:

**Relief Requested**

1. The Debtor seeks entry of an order authorizing the payment of certain prepetition wages and other employment expenses, including wages, salaries and commissions; vacation, holiday, and sick pay; life, disability, medical, and dental insurance benefits; 401(k) retirement plan contributions and related fees; and accrued employment taxes, all relating to Debtor’s employees; and to reimburse employee out-of-pocket business

**MOTION FOR ORDER AUTHORIZING  
DEBTOR TO PAY PREPETITION  
WAGES - 1**

67525-0023/LEGAL25281876.1

**Perkins Coie LLP**  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

1 expenses (collectively, the “Payroll Expenses”). In addition, the Debtor seeks an  
2  
3 authorization allowing banks to honor Debtor’s prepetition payroll and expense checks.  
4

5 **Jurisdiction**  
6

7 2. Pursuant to sections 1107 and 1108 of the Bankruptcy Code, Debtor  
8  
9 continues to operate its business and manage its property as a debtor and debtor-in-  
10  
11 possession.  
12

13 3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and  
14  
15 1334. Venue is proper in this district pursuant to 28 U.S.C. § 1408. This is a core  
16  
17 proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (M).  
18

19 **Background**  
20

21 4. On December 7, 2012 (the “Petition Date”), Debtor filed its voluntary  
22  
23 petition for relief under Chapter 11 of the Bankruptcy Code.  
24

25 5. Precision is a Washington limited liability company headquartered in  
26  
27 Marysville, Washington. Precision manufactures and sells fuel control systems for general  
28  
29 aviation aircraft. Grafenauer Decl. ¶¶ 3, 6.  
30

31 6. Additional information concerning Precision’s business activities and the  
32  
33 need for restructuring can be found in the declaration of Declaration, filed concurrently with  
34  
35 this motion.  
36

37 7. This Chapter 11 filing likely will cause feelings of uncertainty and  
38  
39 consternation among Precision’s employees regarding their future with the company.  
40  
41 Precision therefore needs to demonstrate stability to its employees by promptly meeting all  
42  
43 payroll obligations, including wages, benefits, expense reimbursements and tax payments.  
44  
45 Grafenauer Decl. ¶ 29.  
46  
47

1           8.       The Payroll Motion seeks authority to continue the regular payment of all  
2 wages, salaries and other employment-related expenses as they come due in the ordinary  
3 course of business, including Payroll Expenses that were incurred prepetition. The Debtor  
4 believes that the timely payment of the Payroll Expenses is essential to maintain its ongoing  
5 operations and maximize the value of its assets. Grafenauer Decl. ¶ 34. Such payments will  
6 provide a fair and equitable treatment of the Debtor's employees and their families, and, in  
7 the long run, are in the best interests of Debtor's creditors.  
8

9           9.       A summary of the Debtor's next anticipated payroll, is as follows:  
10

NUMBER OF EMPLOYEES	PAY PERIOD	SCHEDULED PAYROLL DATE	ESTIMATED PAYROLL EXPENSES
18	11/24/12 – 12/8/12	12/13/12	\$66,500

11           10.       Each of the Debtor's employees' claims for prepetition wages or  
12 reimbursement expenses will be less than \$11,725, the amount entitled to priority status  
13 under Section 507(a)(4) of the Code. Grafenauer Decl. ¶ 31. Debtor only seeks authority to  
14 pay prepetition wages or reimbursement expenses up to the amount of \$11,725 for each  
15 employee.  
16

17           11.       The Debtor's business operations include providing its employees with a  
18 variety of benefits, including medical, dental, vacation and sick time, life insurance, a 401(k)  
19 retirement plan, and optional supplemental insurance programs through AFLAC.  
20 Grafenauer Decl. ¶ 32.  
21

22           12.       The Debtor maintains the following benefit plans for its employees, with  
23 average monthly and annual costs as indicated:  
24  
25  
26  
27  
28  
29  
30  
31  
32

TYPE	COMPANY	APPROXIMATE COST	
		MONTHLY	ANNUAL
Medical & Dental	MBA/MBA Trust	\$ 9,066	\$ 108,792
Life	Mutual of Omaha	858	10,296
401(k) Plan	Charles Schwab Trust Co.	13,873	166,480
Accident Insurance	Aflac	23	276

Grafenauer Decl. ¶ 33.

13. Failing to pay wages and other compensation earned prepetition or disrupting the payment of benefits would be detrimental to employee morale and would hinder the Debtor's ability to maintain its ongoing operations and maximize the value of its assets.

Grafenauer Decl. ¶ 34.

#### **Basis for Relief**

14. The Debtor seeks the relief requested in this Payroll Motion because any delay in paying Payroll Expenses and maintaining the employee benefit plans will strain the Debtor's relationships with its employees and negatively impact employee morale at the very time when the dedication, confidence and cooperation of the employees is most critical. Debtor faces the imminent risk that its operations will be significantly impaired if it is not immediately granted authority to make the payments described in this Motion. At this critical and early stage, the Debtor simply cannot risk the substantial disruption to its business operations that would inevitably attend any decline in workforce morale attributable to failure to pay the Payroll Expenses as they come due in the ordinary course.

15. Because the amounts represented by the Payroll Expenses are needed to enable the employees to meet their own personal obligations, absent the relief requested herein, the employees will suffer undue hardship and, in many instances, serious financial

**MOTION FOR ORDER AUTHORIZING  
DEBTOR TO PAY PREPETITION  
WAGES - 4**

67525-0023/LEGAL25281876.1

**Perkins Coie LLP**  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

1 difficulties. Section 507(a)(4) of the Code provides that each employee may be granted a  
2  
3 priority claim for allowed unsecured claims of up to \$11,725 for compensation earned  
4  
5 within the 180 days before the date of the filing of the petition or the date of the cessation of  
6  
7 the debtor's business, whichever occurs first. This compensation includes wages, salaries,  
8  
9 or commissions, as well as vacation, severance, and sick leave pay earned by an individual.

10  
11 16. Section 507(a)(5) grants employees a priority claim for contributions to an  
12  
13 employee benefit plan arising from services rendered within 180 days before the date of the  
14  
15 filing of the petition (or the date of the cessation of the debtor's business, whichever occurs  
16  
17 first). Amounts eligible for priority under section 507(a)(5) are subject to a per-employee  
18  
19 cap of \$11,725, less any amount paid to the employee under section 507(a)(4).

20  
21 17. The Debtor believes that the amount of Payroll Expenses for each employee  
22  
23 will not exceed the sum of \$11,725 allowable as a priority claim under sections 507(a)(5)  
24  
25 and (5), and only seeks authority to pay claims up to that amount. Grafenauer Decl. ¶ 34.

26  
27 18. Courts routinely recognize the validity of the foregoing justifications for  
28  
29 allowing debtors to pay prepetition compensation, deductions and benefits and, as a result,  
30  
31 routinely have granted relief similar to that requested herein.

32  
33 19. As the debtor-in-possession, Debtor has the authority to adopt reasonable  
34  
35 employment policies, subject to the applicable provisions of the Code and may use, sell, or  
36  
37 lease property of the bankruptcy estate to continue its operations. 11 U.S.C. §§ 363(b),  
38  
39 1107, 1108. In addition, the Court may issue any order, process or judgment that is  
40  
41 necessary or appropriate to carry out the provisions of the Bankruptcy Code. 11 U.S.C.  
42  
43 § 105(a).

44  
45 20. Payment of the Payroll Expenses requires the use of property of the Debtor's  
46  
47 bankruptcy estate. Debtor believes it is a prudent exercise of its business judgment to use its

1 assets to timely pay all wages and employment related expenses, whether prepetition or  
2 postpetition, as they come due in the ordinary course of business. Authorizing the payment  
3 of prepetition employment expenses likewise is an appropriate exercise of the Court's  
4 discretion under sections 105 and 363(b) of the Code. *See In re Ionosphere Clubs, Inc.*, 98  
5 B.R. 174, 175-76 (Bankr. S.D.N.Y. 1989); *In re Structurlite Plastics, Corp.*, 86 B.R. 922,  
6 932 (Bankr. S.D. Ohio 1998) (immediate payment of a prepetition claim may be authorized  
7 where it is vital to the reorganization of a Chapter 11 debtor). See also, *In re Adams Apple,*  
8 *Inc.*, 829 F.2d 1484, 1490 (9th Cir. 1987) (payments to providers of "unique and  
9 irreplaceable" services can be justified because the goal of debtor rehabilitation supersedes  
10 the policy of equal treatment of creditors).  
11  
12  
13  
14  
15  
16  
17  
18  
19

20  
21 21. Where, as here, payment of prepetition employee wages, benefits and  
22 expenses is essential to the continued operation of the debtor, it should be approved.  
23 *Ionosphere Clubs*, 98 B.R. at 176-77. The Debtor requires the continued effort and support  
24 of its employees to have a chance for successful reorganization. In exchange for the  
25 continued support of its employees, Debtor must be able to assure its employees that their  
26 paychecks will continue to arrive on time and that their medical insurance and other benefits  
27 will continue uninterrupted.  
28  
29  
30  
31  
32  
33

### 34 Notice

35  
36  
37 22. No request has been made for the appointment of a trustee or examiner, and  
38 no official creditors committee has yet been established in this case.  
39

40  
41 23. Notice of this Payroll Motion has been given by electronic mail, facsimile or  
42 overnight courier to: (a) the Office of the United States Trustee; (b) Coastal Community  
43 Bank; (c) each of the Debtor's twenty (20) largest unsecured creditors; and (d) all parties  
44  
45  
46  
47

**MOTION FOR ORDER AUTHORIZING  
DEBTOR TO PAY PREPETITION  
WAGES - 6**

67525-0023/LEGAL25281876.1

**Perkins Coie LLP**  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

1 known by Debtor to claim any lien on or security interest in any of Debtor's assets. In light  
2 of the relief requested herein, the Debtor submits that no other or further notice is required.  
3  
4

5 **Rule 6003(b)**  
6

7 24. Bankruptcy Rule 6003(b) empowers a court to grant relief within the first 20  
8 days after the filing of a petition "to the extent that relief is necessary to avoid immediate  
9 and irreparable harm." Ultimately, because of the critically important role played by  
10 Debtor's employees, failure to grant this Payroll Motion would threaten the continued  
11 retention of Debtor's employees and seriously harm the Debtor's estate. Accordingly, the  
12 Debtor meets the "immediate and irreparable harm" standard of Bankruptcy Rule 6003(b).  
13  
14  
15  
16  
17  
18

19 **Conclusion**  
20

21 25. Debtor requires the continued support of its employees in order to reorganize.  
22 If the Debtor is not allowed to satisfy prepetition payroll obligations, it risks the loss of its  
23 employees and the employees' support and disruption of its operations. For the foregoing  
24 reasons, Debtor respectfully asks the Court to enter an order approving payment of the  
25 Payroll Expenses including the following payments:  
26  
27  
28  
29  
30

- 31 (a) Wages, salaries, benefits, and all federal, state, and local payroll-related  
32 taxes, deductions, and withholdings related to such payments accrued by  
33 Debtor's employees within ninety (90) days of the Petition Date not to  
34 exceed \$11,725 per employee;  
35  
36 (b) Out-of-pocket business expenses incurred by Debtor's employees within  
37 ninety (90) days prior to the Petition Date;  
38  
39 (c) Payments to maintain and with respect to the employer-sponsored benefits  
40 coverage and other benefits set forth in paragraphs 11-12 above; and  
41  
42 (d) Contributions and administrative costs associated with the employees'  
43 retirement and 401(k) plan that arose or accrued prepetition.  
44  
45  
46  
47

1 Debtor also requests entry of an order directing banks to honor all prepetition payroll  
2 and employee expense checks.  
3  
4

5  
6  
7 DATED: December 7, 2012.

**PERKINS COIE LLP**

8  
9  
10 By: /s/ John S. Kaplan

11 John S. Kaplan, WSBA No. 23788  
12 JKaplan@perkinscoie.com  
13 1201 Third Ave., Suite 4800  
14 Seattle, WA 98101  
15 Telephone: 206.359.8000  
16 Facsimile: 206.359.9000  
17

18 Attorneys for Debtor  
19 Precision Airmotive, LLC  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

**MOTION FOR ORDER AUTHORIZING  
DEBTOR TO PAY PREPETITION  
WAGES - 8**

67525-0023/LEGAL25281876.1

**Perkins Coie LLP**  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000